

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

February 8, 2006

Robert C. McDonald, Esquire
Silverman, McDonald & Friedman
1010 N. Bancroft Parkway, Suite 22
Wilmington, DE 19805

Wayne N. Elliot, Esquire
Prickett, Jones & Elliot, P.A.
11 North State Street
Dover, DE 19901

RE: Jackson v. Madric
C.A. No. 03C-12-029 ESB

Date Submitted: December 12, 2005

Dear Counsel:

This is my decision on the Motion for Remittitur or New Trial filed by defendant Malik Madric ("Madric") and the Motion for Costs filed by plaintiff Jennifer Jackson ("Jackson"). Jackson has also requested an award of pre-judgment interest. Madric's Motion for Remittitur or New Trial is denied and Jackson's Motion for Costs and request for pre-judgment interest are granted for the reasons set forth herein.

STATEMENT OF THE CASE

Jackson and Madric were involved in a motor vehicle accident on January 5, 2002. Jackson sustained an injury to her neck in the accident. Madric admitted that his negligence caused the accident. Jackson was treated by Richard P. DuShuttle, M.D. She was examined on behalf of Madric by Ali Kalamechi, M.D. Both doctors agreed that the accident caused Jackson's neck injury and that it was permanent. The jury returned a verdict in favor of Jackson in the amount of \$46,000.

STANDARD OF REVIEW

In a Motion for Remittitur or New Trial, the Court starts with the fundamental principle that the jury's verdict is presumed to be correct.¹ In a jury trial, the function of the fact finder does not belong to the Court, but rather to the jury.² The jury's verdict should not be disturbed unless it is clearly shown to be the result of passion, prejudice, partiality or corruption, or that it was manifestly in disregard of the evidence or applicable rules of law.³ Furthermore, the Court will not upset the verdict of a jury unless "the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."⁴

DISCUSSION

I. Jury Instruction and Prior Accident Issues

Madric argues that the Court erred in excluding proposed Question No. 1 from the Special Verdict Form. Question No. 1 asked whether or not the jury found the negligence of defendant to be the proximate cause of the injuries to the plaintiff. This question was excluded because Madric admitted liability for the accident and both doctor's agreed that the accident caused Jackson's neck injury and that it was permanent. This is also evidenced in the jury instructions that both parties agreed to. In the instruction that went to the Jury titled "Nature of the Case" both parties agreed to the following statement: "Normally these cases are decided on the issues of negligence. However, in this case, the Defendant has admitted liability. Therefore, the only issue for you to decide in this

¹ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

² *Caldwell v. White*, 2005 WL 1950902 at *3 (Del. Super.).

³ *Young*, 702 A.2d at 1237.

⁴ *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

case is the amount of money damages that you will award to Jennifer Jackson to compensate her for the injuries she received in the motor vehicle collision of January 5, 2002.” The issue of negligence is irrelevant because Madric admitted liability and both doctors agreed that the accident caused Jackson’s neck injury. Therefore, Question No. 1 was irrelevant and unnecessary.

Madric argues that evidence existed that shows that Jackson was involved in a prior accident. He asserts that Jackson’s current injuries could have been caused by this prior accident and that Dr. DuShuttle’s opinion did not take this into consideration. Madric’s argument is without merit. Jackson disclosed this prior accident to Madric in discovery. Madric was free to question Dr. DuShuttle about the prior accident, but did not do so. Madric cannot now claim that he was unaware of the prior accident because it was well known to him. Additionally, both doctors agreed that Jackson’s injuries were permanent and caused by the accident on January 5, 2002. There was simply no other evidence to base Madric’s requested jury instruction on or to suggest that Jackson’s injury came from anything other than the car accident on January 5, 2002.

II. Jury verdict was not shocking

Madric argues that the jury verdict was shocking and out of proportion with Jackson’s injuries. A trial court does not review a jury award of damages for pain and suffering to determine whether, in its view, the award is excessive.⁵ Instead, the trial court only reviews such an award to determine whether the size of the award is “so grossly out of proportion [to the injuries suffered] as to shock the Court’s conscience and sense of justice.”⁶ The jury returned a verdict in the amount of \$46,000. Madric stipulated that Jackson has a life expectancy of 57.89 years. Both doctors agreed

⁵ *Storey*, 401 A.2d 458.

⁶ *Storey*, 401 A.2d at 464 n.6.

that Jackson's injuries were permanent, which means that Jackson will have a permanent neck injury for the next 57.89 years. Given this, the verdict does not shock me nor do I find it to be so grossly out of proportion as to shock the Court's conscience and sense of justice.

III. Costs

Jackson requests the Court to tax as costs \$1,158.80 for the deposition and court reporter fees for Richard P. DuShuttle, M.D., the transcription fee for Ali Kalamechi, M.D., and the court filing fees. Madric did not submit a response to Jackson's Motion for Costs. Pursuant to Superior Court Civil Rule 54 and 10 *Del. C.* § 8906, expert witness fees may be taxed as costs against the unsuccessful party.⁷ The Jury returned a verdict in favor of Jackson on November 21, 2005. Therefore, Jackson is entitled to costs.

(A) Richard P. DuShuttle, M.D.

Jackson requests to be reimbursed for the deposition testimony of Richard P. DuShuttle, M.D. Jackson also seeks to be reimbursed for the Court Reporter fees associated with the transcription fee for the deposition. The deposition fee of Richard P. DuShuttle, M.D., totaled \$825.00, and the Court Reporter fees associated with that deposition totaled \$91.00. Jackson's request in the amount of \$916.00 is granted.

(B) Ali Kalamechi, M.D.

Jackson requests to be reimbursed for the transcription fees for the deposition of Ali Kalamechi, M.D., in the amount of \$67.80. Jackson's request is granted in the amount of \$67.80.

(C) Court Filing Fees

Jackson also seeks \$175.00 to cover the Court filing fees. Jackson's request for the Court

⁷*Stevenson v. Henning*, 268 A.2d 872 (Del. 1972).

filing fees is also granted in the amount of \$175.00.

Jackson shall receive \$1,158.80 as costs.

IV. Pre-Judgment Interest

Jackson seeks the addition of pre-judgment interest to the final judgment. In support of her argument, Jackson cites to 6 *Del. C.* § 2301(d). 6 *Del. C.* § 2301(d) provides:

“In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which judgment was entered.”

Jackson has successfully met all of the requirements of 6 *Del. C.* § 2301(d). Based upon a letter dated October 19, 2005, Jackson made a written demand to Madric to settle the lawsuit, and the demand remained open for more than 30 days. Jackson offered to settle the case for less than the amount of damages the jury awarded. Madric has not submitted a response to Jackson’s request for pre-judgment interest. 6 *Del. C.* § 2301(a) provides guidance on determining the proper interest rate to be applied. It states, “...Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which the interest is due...”⁸ A review of the Federal Reserve Bank Discount Window & Payment System shows that on January 5, 2002, the Federal Reserve Discount Rate was 1.25%. Accordingly, the proper statutory rate of interest to be applied to the final judgment is 6.25%.

Applying the proper statutory rate of interest to the final judgment, the amount of pre-

⁸ 6 *Del. C.* § 2301(a).

judgment interest to be awarded is \$11,155.⁹

CONCLUSION

Madric's Motion for Remittitur or New Trial is denied, while Jackson's Motion for Costs and request for pre-judgment interest are granted.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

⁹46,000 X .0625 X 3.88 = \$11,155.